



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
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WATER QUALITY DIV.

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REPLY TO
ATTENTION OF:

Executive Office

SUBJECT: Permit Application: SWG-2007-01865, Captain Jack Roberts
CERCLIS EPA ID: TXN000606611, San Jacinto River Waste Pits

Miguel I. Flores
Director, Water Quality Protection Division
Environmental Protection Agency (6WQ)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Dear Mr. Flores:

This is in reference to my August 11, 2008, letter to Richard Greene, informing him that the elevation of the San Jacinto River Waste Pits (SJWP) site to the Environmental Protection Agency (EPA) National Priorities List was recently brought to our attention by the Texas Parks and Wildlife Department. In December of 2007, we authorized an extension of time for dredging under permit SWG-2007-01865 - Captain Jack Roberts, which is adjacent to SJWP. There are several hundred other permits issued in the area of the San Jacinto River at it's confluence with Old River, in Harris County, Texas. In my letter, I requested input regarding EPA's position on the issuance of Captain Robert's permit, the management of currently issued permits, and the ongoing issuance of permits in the area of the SJWP site.

In an October 21, 2008, response, you explained that EPA is conducting a remedial investigation to determine the nature and extent of the contamination. You affirmed that EPA is concerned that dredging activities may contribute to a release or threat of release of hazardous substances and that parties who engage in dredging, may be liable for the costs in responding to the release or threat of release. You further stated that EPA discourages Captain Jack Roberts from dredging in the permit area until the remedial investigation is concluded and remedial study area identified. In addition, you recommended that any stockpiled dredged materials not be moved until further testing can be conducted. You wrote that EPA supports the immediate suspension and/or revocation of permit SWG-2007-01865, until the full extent and nature of the contamination is known; and recommended that we coordinate all other permit actions in the SJWP site with EPA and the other agencies. However, we did not receive any factual information supporting the purported recently discovered dioxin pollution that would be considered changed circumstances on the applicant's project site. We also did not receive any

information regarding the immediate action EPA is undertaking regarding the conveyance of EPA's potentially serious concerns to the applicant and other applicants that are located in this very region.

Pursuant to 33 CFR 325.7, I may reevaluate the circumstances and conditions of a permit, at the request of a third party and initiate action to suspend or revoke a permit as may be made necessary by considerations of the public interest. Among the factors that must be considered are whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended; the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. A permit may be suspended only after a written determination and finding is prepared substantiating that immediate suspension is in the public interest. The purported dioxin pollutions, if it can be factually substantiated, could qualify as changed circumstances and/or significant objections not previously considered.

Based on the above information, I am requesting EPA provide specific information which substantiates a determination to suspend the subject permit and/or permits and am requesting what actions EPA is currently undertaking to coordinate these potentially serious concerns with the applicant. Actions taken under Section 401 of the Clean Water Act, and/or the Comprehensive Environmental Response, Compensation, and Liability Act authorities would provide the most direct cause for a determination to suspend. Please let me know what immediate action EPA will take under these authorities. I would appreciate receiving your response within 30 days so that I may make a timely decision on whether to initiate the suspension process.

If you have any questions please contact me 409-766-3001 or Mr. Sam Watson at 409-766-3946, if you would like to discuss this request in more detail.

Sincerely,

David C. Weston
Colonel, Corps of Engineers
District Commander

Copies Furnished
See Page 3 and 4

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